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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS Arizona Corporation Commission

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AZ CORP COMMISSION

DOCKET CONTROL

DOUG LITTLE – Interim Chairman

BOB STUMP

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TOM FORESE

VACANT

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IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY TO EXTEND ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY IN CASA GRANDE, PINAL
COUNTY, ARIZONA.

DOCKET NO. W-01445A-03-0559

PROCEDURAL ORDER

BY THE COMMISSION:

This matter was originally commenced on August 12, 2003, when Arizona Water Company (“AWC”) filed an application for an extension of its Certificate of Convenience and Necessity (“CC&N”) in Pinal County, Arizona.

In this docket on April 6, 2004, in Decision No. 66893, the Commission granted AWC a CC&N extension,¹ subject to compliance with the following: (1) AWC was required to charge the customers in the extension area the existing Casa Grande rates and charges until further Commission order; (2) AWC was required to file with the Commission, within 365 days of the Decision, a copy of the “Developers’ Assured Water Supply for each respective development”; and (3) AWC was required to file with the Commission, within 365 days of the Decision, a main extension agreement (“MXA”) associated with the extension area. Decision No. 66893 further stated: “IT IS FURTHER ORDERED that in the event Arizona Water Company fails to meet the above conditions within the time specified, this Decision is deemed null and void without further Order of the Arizona Corporation Commission.”

On March 30, 2005, before the April 6, 2005, compliance deadline, AWC filed a Request for Additional Time to Comply with Filing Requirement (“Request for Time”).

On April 7, 2005, “for and on behalf of” Cornman Tweedy 560, LLC (“Cornman”), Robson Communities (“Robson”) filed a letter alleging that because AWC had failed to timely satisfy the

¹ The Decision included the following legal description for the extension area: “Sections 19, 20, 21, 22, 23, W ½ 24, W ½ 25, 26, 27, 28, 29, & 30, all in Township 6 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.”

1 compliance conditions of Decision No. 66893, the CC&N extension conditionally granted therein was
2 automatically null and void. The letter stated that Cornman owned approximately 1,120 acres within
3 the extension area; that all but approximately 160 acres of that property were included in the EJR Ranch
4 Master Planned Community ("EJR Ranch") being developed by Robson, an affiliate of Cornman; and
5 that Cornman desired to obtain water service for its property from Picacho Water Company ("Picacho
6 Water"), another affiliate of Robson, rather than from AWC. The letter also identified Picacho Sewer
7 Company ("Picacho Sewer") as another affiliate of Robson and Cornman.

8 On April 11, 2005, the Commission's Utilities Division ("Staff") recommended that evidentiary
9 hearings be scheduled to consider the merits of AWC's Request for Time and Robson's objection to
10 that request.

11 Numerous filings followed, including a November 2005 Procedural Order granting intervention
12 to Cornman and denying intervention to Picacho Water. A hearing was held in July 2006 for the
13 purpose of obtaining evidence on the circumstances and events that had resulted in AWC's not
14 complying with the time periods established in Decision No. 66893. The hearing did not involve a
15 reopening of the Decision granting AWC a CC&N and did not address whether a different water utility
16 should be providing service in the extension area.² AWC, Cornman, and Staff all appeared and
17 participated in the hearing.

18 On July 30, 2007, the Commission issued Decision No. 69722, finding that AWC had been
19 prevented from complying with the Decision No. 66893 requirement to file a Developer's Certificate
20 of Assured Water Supply ("CAWS") because the developer for the Florence Country Estates
21 development, at Cornman's direction, had withdrawn its pending CAWS Application from the Arizona
22 Department of Water Resources' ("ADWR's") consideration. The Commission found that this had
23 made it impossible for AWC to comply with the condition in Decision No. 66893 and was beyond
24 AWC's control. The Commission also found that the Florence Country Estates development area had
25 been included in an Analysis of Assured Water Supply ("AAWS") issued by ADWR in March 2005
26 for the EJR Ranch development and that issuance of that AAWS satisfied the objective of the CAWS

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28 ² Additional detail regarding the procedural history is set forth in the Procedural Orders issued on March 22, 2006, and April 19, 2006.

1 filing requirement—to ensure the existence of adequate physical water supplies for the development.
2 The Commission determined that “for purposes of compliance, the conditions placed on Arizona
3 Water’s CC&N extension in Decision No. 66893 [had] been fulfilled.” The Commission expressed
4 concern, however, that the Cornman property might not have a current need or necessity for water
5 service and determined that the record should be reopened, pursuant to A.R.S. § 40-252, and the case
6 remanded to the Hearing Division for further proceedings regarding whether AWC should continue to
7 hold a CC&N for the Cornman property. The Commission put AWC on notice that the subsequent
8 remand proceeding would be for the purpose of considering whether the Cornman property should be
9 deleted from the extension area granted to AWC by Decision No. 66893 and directed the Hearing
10 Division to conduct further evidentiary proceedings in this matter, including appropriate opportunities
11 for intervention and an appropriate opportunity for AWC to present its case.

12 Thereafter, a remand evidentiary hearing was scheduled and then continued, prefiled testimony
13 and other filings were made, and procedural conferences were held. In February 2009, at a procedural
14 conference, AWC and Cornman requested that the continued hearing be vacated and that a
15 recommended order be submitted to the Commission based on the prefiled testimony docketed in
16 anticipation of hearing. AWC and Cornman were directed to make their request in writing, and on
17 March 6, 2009, they filed a Motion for Submission of Matter on the Pleadings, requesting that the
18 Commission’s decision be made without an evidentiary hearing. The Motion proposed that the prefiled
19 testimony be admitted into evidence subject to specific objections of the parties either previously made
20 or raised in closing briefs. The Motion was granted in a Procedural Order issued on April 16, 2009,
21 which also established a briefing schedule.

22 On November 29, 2010, a Recommended Order on Remand from Decision No. 69722
23 (“Recommended Order”) was issued. The Recommended Order was discussed during the
24 Commission’s Open Meetings on December 14, 2010, and February 1, 2011, but no decision was
25 adopted by the Commission. Instead, at the Open Meeting on February 1, 2011, the Commission voted
26 to send the matter back to the Hearing Division for further proceedings to determine “whether a public
27 service corporation, like Arizona Water, in this water challenged area and under the circumstances
28 presented in this case, is providing reasonable service if it is not able or not willing to provide integrated

1 water and wastewater services.” This inquiry is the matter at hand, in which procedural conferences
2 have been held, discovery disputes have been resolved, and a number of filings have been made
3 regarding various issues.

4 On February 24, 2014, a Procedural Order was issued adopting a procedural schedule proposed
5 by Cornman and AWC and scheduling a hearing to commence on August 25, 2014. The hearing date
6 was later continued to September 4, 2014, in response to an unopposed request from Cornman.

7 On May 30, 2014, AWC filed the testimony of Rita P. Maguire, Esq.; Paul Walker; William
8 Garfield; and Fredrick Schneider.

9 On July 18, 2014, Cornman filed the Rebuttal Testimony of Stephen Soriano, Ernest G.
10 Johnson, and Fred Goldman.

11 On July 25, 2014, AWC filed a Notice of Deposition of Ernest G. Johnson Sr.

12 On July 29, 2014, AWC filed a Motion to Strike Pre-Filed Rebuttal Testimony of Ernest G.
13 Johnson and to Preclude His Testimony at Hearing (“Motion”). AWC asserted in its Motion that Mr.
14 Johnson’s testimony should not be admitted because Mr. Johnson held two supervisory positions at the
15 Commission during the pendency of this matter and because Mr. Johnson’s testimony “consists solely
16 of legal conclusions, not facts.”

17 On July 31, 2014, Cornman filed Notices of Deposition for Rita P. Maguire and Paul Walker.

18 On August 1, 2014, AWC filed a First Amended Notice of Deposition of Ernest G. Johnson.

19 On August 11, 2014, AWC filed a Supplement to Motion to Strike Pre-Filed Rebuttal
20 Testimony of Ernest G. Johnson and to Preclude His Testimony at Hearing.

21 On August 12, 2014, a Procedural Order was issued directing Cornman and Staff to file
22 Responses to AWC’s Motion by August 15, 2014, and directing AWC to file a Reply to those
23 Responses by August 20, 2014.

24 On August 15, 2014, Cornman and Staff filed their Responses to AWC’s Motion.

25 On August 20, 2014, AWC filed its Reply to the Responses.

26 On August 22, 2014, a Procedural Order was issued vacating the September 4, 2014, hearing
27 date; scheduling a procedural conference to be held at the time previously set for the hearing; and
28 requiring AWC to file a Supplemental Reply addressing both Cornman’s argument that A.R.S. § 38-

1 504(A) (“§ 38-504”) superseded A.A.C. R14-3-104(G) (“Rule 104”) and was controlling and
2 Cornman’s assertion that if Mr. Johnson were precluded from testifying, Mr. Walker likewise should
3 be disqualified because of his prior employment as former Commissioner Spitzer’s policy advisor.

4 On August 27, 2014, AWC filed its Supplemental Reply.

5 On September 4, 2014, the procedural conference went forward as scheduled, with AWC,
6 Cornman, and Staff appearing through counsel. AWC and Cornman presented oral argument relating
7 to AWC’s Motion, and Staff provided an essentially neutral position. At the conclusion of the
8 procedural conference, the parties were directed to review Oregon Public Utility Commission
9 (“OPUC”) Order No. 01-249,³ which addressed a scenario involving use of a former OPUC employee
10 as an expert witness, and to file briefs regarding whether the same or a similar test should be used in
11 this matter. It was determined that the briefs would be due on September 22, 2014.

12 On September 22, 2014, AWC, Cornman, and Staff filed their briefs regarding OPUC Order
13 No. 01-249.

14 On May 7, 2015, a Procedural Order was issued declaring that while A.R.S. § 38-504 did not
15 apply to Mr. Johnson’s participation in this matter as a witness for Cornman, A.A.C. R14-3-104(G) did
16 apply to Mr. Johnson’s participation in this matter as a witness for Cornman. The Procedural Order
17 also scheduled the hearing in this matter to commence on September 14, 2015, and to continue, as
18 necessary, on September 15 through 18, 2015.

19 On September 3, 2015, a telephonic procedural conference was held at the request of AWC and
20 Cornman, with AWC, Cornman, and Staff appearing through counsel. Cornman explained that Mr.
21 Johnson was expected, that day, to hand deliver to the Commission’s Executive Director a letter
22 requesting permission, under Rule 104, to appear as a witness for Cornman in this matter (“Request”).
23 Cornman stated that it desired to have the hearing continued, pending the Commission’s decision on
24 Mr. Johnson’s Request. Cornman was unable to specify the duration of the requested continuance due
25 to uncertainty regarding the Commission’s process for handling the Request. AWC and Staff did not
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27 ³ OPUC Order No. 01-249 was issued on March 21, 2001, *in re* Portland General Electric Company’s Proposal to
28 Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149 (UE 115) and *in re* PacifiCorp’s
Proposal to Restructure and Reprice Its Services in Accordance with the Provisions of SB 1149 (UE 116). OPUC Order
No. 01-249 is described in more detail in the Procedural Order issued in this matter on May 7, 2015.

1 oppose the requested indefinite continuance. It was determined that an indefinite continuance would
2 be granted, that Cornman would file copies of the Request with Docket Control, and that Cornman
3 would file a Status Report within 30 days.

4 On September 4, 2015, a Procedural Order was issued continuing indefinitely the hearing in
5 this matter and vacating the September 14-18 hearing dates; requiring Cornman to file a copy of Mr.
6 Johnson's Request by September 11, 2015; and requiring Cornman to file a Status Report every 30
7 days until Mr. Johnson's Request was approved or denied.

8 On September 11, 2015, a Notice of Filing was made including a copy of Mr. Johnson's
9 Request, which had been filed with the Executive Director on September 3, 2015.

10 On October 19, 2015, AWC filed a letter urging the Commission to decline Mr. Johnson's
11 Request at the Staff Open Meeting to be held on October 20, 2015.

12 On October 20, 2015, Mr. Johnson's Request was considered at the Staff Open Meeting. After
13 hearing argument from AWC and Cornman, the Commission approved the Request and directed the
14 Commission's Chief Counsel to file a memorandum reflecting the Commission's approval.

15 On October 22, 2015, the Commission's Chief Counsel filed a Memorandum informing Mr.
16 Johnson that the Commission had granted his Request.

17 On October 29 and November 4, 2015, Procedural Orders were issued directing AWC,
18 Cornman, and Staff, by November 16, 2015, to make filings including a proposed schedule for this
19 matter going forward.

20 On November 16, 2015, AWC, Cornman, and Staff filed a Joint Proposal Regarding Procedural
21 Schedule ("Joint Proposal"). In the Joint Proposal, AWC requested that prior to a hearing, a ruling be
22 made on that portion of AWC's Motion regarding the admissibility of certain portions of Mr. Johnson's
23 testimony. The Joint Proposal stated that this could be decided based upon the pleadings filed in the
24 docket or after additional oral argument, with AWC expressing a preference for additional oral
25 argument.⁴ A schedule was proposed, assuming both that Mr. Johnson would still be a witness after
26 the Motion was ruled upon and that Staff would not take an active role at hearing.

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28 ⁴ Because the filings and the oral argument transcript related to the Motion are available, additional oral argument is not necessary at this time.

1 On December 9, 2015, a Procedural Order was issued ruling upon the Motion by striking
2 specific portions of Mr. Johnson's testimony; scheduling a hearing to commence on February 18, 2016;
3 directing Staff to participate actively and fully as a party in the current stage of this matter; and
4 establishing procedural requirements and deadlines. *Inter alia*, Staff was required to prepare and file,
5 by January 6, 2016, testimony responsive to the testimony filed in May 2014 and July 2014 by AWC
6 and Cornman, respectively; AWC was directed to file surrebuttal testimony by January 6, 2016;
7 Cornman was directed to file rejoinder testimony by January 28, 2016; and AWC and Staff were
8 directed to provide any additional responsive testimony through witnesses at hearing.

9 On January 4, 2016, AWC filed a Motion for Revisions to December 9, 2015 Procedural Order,
10 requesting that the deadline for AWC's surrebuttal testimony be extended to January 11, 2016, due to
11 conflicts caused by the holidays and other Commission matters, and that AWC, like Cornman, be
12 permitted to file rejoinder to Staff's testimony by January 28, 2016. AWC stated that counsel for
13 Cornman and Staff had been informed of and had no objections to the requested revisions to the
14 procedural schedule.

15 It is reasonable to revise the procedural schedule in response to AWC's Motion and, further, to
16 clarify the language used in reference to the testimony to be filed herein.⁵

17 IT IS THEREFORE ORDERED that the procedural schedule established by the Procedural
18 Order issued on December 9, 2015, is hereby modified as follows:

- 19 • **AWC's surrebuttal testimony** and associated exhibits shall be filed on or before **January 11,**
20 **2016;**
- 21 • **Cornman** shall file, on or before **January 28, 2016,** its **rejoinder testimony** and associated
22 exhibits responding to AWC's surrebuttal and any **testimony** and associated exhibits
23 **responding to Staff's testimony;**
- 24 • **AWC** shall file, on or before **January 28, 2016,** any **testimony** and associated exhibits
25 **responding to Staff's testimony;**
- 26 • **Staff** shall file, on or before **February 9, 2016,** any **testimony** and associated exhibits
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28 ⁵ Referring to this testimony as rejoinder is unclear.

responding to the responsive testimony of AWC and Cornman; and

- AWC and Cornman shall, on or before **February 16, 2016**, file any **testimony** and associated exhibits **responding to Staff's responsive testimony**.

IT IS FURTHER ORDERED that the provisions of the December 9, 2015, Procedural Order not modified by the immediately preceding ordering paragraph remain in full force and effect.

IT IS FURTHER ORDERED that the time periods specified herein shall not be extended pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 5th day of January, 2016.


SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 5th day of January, 2016, to:

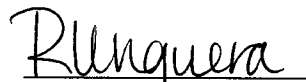
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